

Protection Order Committee
Judicial Conference of Indiana

Minutes

January 25, 2008

The Protection Order Committee met at the Indiana Judicial Center on Friday, January 25, 2008 from 12:00 noon – 3:30 p.m.

1. Members present. Katherine Garza Bishko, Therese Brown, Ann Jochim, J. Douglas Knight, Christopher A. Newton, Jose D. Salinas, Kim VanValer, Cheryl A. Williamson, and Thomas H. Busch, Chair.
2. Staff present. Jeffrey Bercovitz and Tom Jones provided the committee with staff assistance.
3. Guests present. Mary DePrez, Director and Counsel, Trial Court Technology; Pat Hess, Consultant, Entara Technology Group, for JTAC; Chief Deputy Clerk Tammy Baitz, were also present.
4. Minutes. The minutes for October 26, 2007 were approved.
5. Questions for review.
 - a. Definition of domestic violence. Jeffrey Bercovitz distributed the new definition of domestic violence which includes animal cruelty under HEA 1386-2007. Committee members agreed the definitions in Chapter I, the instructions for the protection order petition, and in Appendix I need to be changed to match the new definition. Judge Busch asked all members to review the new definition when drafting changes to the various sections of the Protection Order Deskbook.
 - b. Filings of petitions by juveniles. Members of the committee were advised by two members of the Privacy Task Force of the Records Management Committee the purpose and the intent of the provision keeping confidential the names of juveniles who were victims of sex crimes in Administrative Rule 9, was to apply it only in criminal cases, not civil cases. Therefore, the use of the name of the juvenile victim of sex crimes in civil protection orders does not violate Administrative Rule 9. Commissioner Bishko and Magistrate Williamson agreed to continue to work on draft language for this issue in their chapter of the Deskbook.
 - c. Fees for out of state service of process. Mr. Bercovitz distributed Ind. Code § 34-26-5-16, which prohibits Indiana courts from charging fees for service of process of protection orders. He recently received a call concerning another state attempting to charge a fee for service of an Indiana protection order. Possible ways to encourage the other state not to charge a fee include: (1) the Indiana sheriff contacting the sheriff in the other state and requesting no fee be charged; (2) the Indiana prosecutor contacting the prosecutor in the other state requesting no fee be charged; (3) use of certified mail to serve the order; (4) suggesting to the other state that a condition to a state's continued

receipt of STOP grant monies may prohibit a service fee, and (5) asking the out of state clerk indicate their authority to charge the fee.

d. Use of confidential form in NCO cases. Committee members agreed the confidential form must still be used in No Contact Order cases since the statute still requires it. However, the information for the form is kept in the Protection Order Registry and it may not be needed in the future.

e. Notice of firearms laws for STOP grant funding. Jeffrey Bercovitz distributed an email from Barbara Hart, National Center for Full Faith and Credit, which indicated certification that judges are incorporating notice of firearms provisions in protection orders and no contact orders as a condition for continued receipt of federal STOP grant monies. The "Important Notice" language in all caps language in our protection orders and no contact orders contains substantially similar language to that suggested by Barbara Hart. In addition, the domestic violence determination form, found at the Division of State Court Administration contains language about the collateral consequences of a conviction of a domestic violence crime. Members of the committee agreed to have Mary DePrez check with the Indiana Criminal Justice Institute about this certification.

f. Compliance hearings in misdemeanor cases. Senior Judge Reichard recently asked whether compliance hearings are conducted in misdemeanor domestic violence cases. Judge Newton indicated Vigo County conducted them in the past but no longer conduct them. Judge Busch said former Judge Zeman in Tippecanoe County did them a few years ago. Judge Knight said Vanderburgh County conducts protection order compliance hearings within three (3) days after a protection order is issued to determine if firearms are turned in to the county when the respondent is ordered to do so. The property clerk sends an email to the judge when the firearm is turned in. A bench warrant is issued if the Respondent does not appear at the hearing.

6. Protection Order Deskbook revisions.

a. Chapter 2 (Clerk) revisions were distributed to committee members. Clerk Jochim and Clerk Brown agreed to review these revisions for the next meeting.

b. Committee members agreed to review chapters 1 (Jurisdiction), 2 (Duties of Clerk) and 10 (Federal and State Firearms Laws) and 3 (Ex Parte Orders) at the next meeting.

7. Protection Order Registry.

a. Mary DePrez and Pat Hess distributed a map showing county by county implementation of the Protection Order Registry (POR). Mary DePrez distributed a stakeholder monthly update also.

b. Mary DePrez stated a judge a recently requested the ex parte protection order form be changed to permit a court to delete the portion of the conditions of the order which prohibit the respondent from engaging in stalking or sex offenses against the petitioner when no allegations of stalking or sex offenses are made in the petition. Committee members agreed not to change the order since the respondent may present a credible threat of these elements of the protection order and the definition of domestic or family violence includes these elements.

c. Pat Hess reported the same judge wanted condition three (3) on the ex parte protection order to be changed to use either "removed" or "excluded" rather than always

using both words. Committee members said condition four (4) “stay away” or condition (6) “additional relief” could be used in place of the condition the judge wanted to change.

d. Mary DePrez noted the Ex Parte Protection Order protects the intimate partner or the child. She asked whether the Brady prohibition included the child of the person rather than just the intimate partner. Judge Busch explained the definition of intimate partner does not include child. However, a protection order which qualifies for federal firearms protections does include protection of the child of the intimate partner.

e. Mary DePrez reported she was contacted by Richard Boone from Appriss concerning grants for payment for victim notification systems. Committee members were concerned about funding when the grant monies ended. In addition, other enhancements were needed for the protection order registry (e.g. service) before victim notification is explored.

f. Mary DePrez discussed changing the statutes to reflect the counties which use the protection order registry may not need paper copies of protection orders in law enforcement files. Pat Hess said the computer server in which the registry is housed is backed up every day. She also reviewed various grant requests prepared by JTAC for completion of protection orders at home or with advocates and other areas.

8. Other.

a. Judge Salinas discussed Marion County’s use of the prohibition against firearms as part of a no contact order when persons first bond out of jail. Committee members reviewed procedures in their counties for the prohibition against firearms in no contact orders.

b. HB 1096 was distributed, which permits all magistrates to enter final orders in protection order and small claims cases.

9. Future meeting dates.

a. Members of the committee agreed to discuss deskbook revisions at their next meeting.

b. Committee members agreed to meet again on: Friday, March 28, 2008, April 25, 2008 and June 27, 2008, July 25, 2008, August 22, 2008 and October 24, 2008 all from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law